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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |  |  |
|--|-------------|----------------------|-----------------------|------------------|--|--|
| 10/596,685   | 08/07/2006  | Fabian Fagotti       | 04306/0204990-US0     | 9466             |  |  |
| 7278   | 7590        | 07/24/2009           | EXAMINER              |                  |  |  |
| DARBY & DARBY P.C.<br>P.O. BOX 770<br>Church Street Station<br>New York, NY 10008-0770 |             |                      | BERTHEAUD, PETER JOHN |                  |  |  |
| ART UNIT   |             | PAPER NUMBER         |                       |                  |  |  |
| 3746   |             |                      |                       |                  |  |  |
| MAIL DATE  |             | DELIVERY MODE        |                       |                  |  |  |
| 07/24/2009   |             | PAPER                |                       |                  |  |  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/596,685             | FAGOTTI, FABIAN     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | PETER J. BERTHEAUD     | 3746                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 13 May 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 21 June 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/13/2009 has been entered. It should be noted that claims 1-5 have been amended.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riffe 5,173,034 in view of Fogotti WO 99/53200.

Riffe teaches a discharge system for compressors comprising: a cylinder block 19 defining a compression chamber (see 29); a first discharge chamber 41 receiving an intermittent gas mass flow from the compression chamber; a second discharge chamber 46 in direct communication with the first discharge chamber 41 (see Fig. 2B); a third discharge chamber 48 in fluid communication with the first discharge chamber 41 and the second discharge chamber 46 and opened to a discharge tube 56; and a valve

(see hole in 33 leading from 41 to 59) provided in the fluid communication between the first and third discharge chambers wherein the valve allows gas to pass, establishing a parallel arrangement of the discharge chambers and providing a direct fluid communication between the first 41 and the third discharge chambers 48, when a gas mass flow passing from the compression chamber to the first discharge chamber reaches a determined gas mass flow value. Riffe further teaches (Fig. 2A) that the valve may not exist thus blocking said direct fluid communication between the first 63 and third 68 discharge chambers, establishing a serial arrangement of the discharge chambers (63, 66, 68), when said gas mass flow reaches values that are lower than the determined gas mass flow value. Riffe further teaches a valve plate 33 is provided between the compression chamber and the first discharge chamber 41, carrying at least one suction valve and one discharge valve 42 (see col. 4, lines 15-18). However, Riffe does not teach the claimed valve limitations taught by Fogotti.

Fogotti (Figs. 2 and 3) teaches a discharge arrangement for a hermetic compressor comprising: a cylinder block 2 defining a compression chamber 7; a first discharge chamber 12 receiving an intermittent gas mass flow from the compression chamber 7; a second discharge chamber 13 in direct communication with the first discharge chamber 12; a third discharge chamber 15 in fluid communication with the first discharge chamber 12 and the second discharge chamber 13 and opened to a discharge tube 9; and a valve 30 provided in the fluid communication between the first 12 and third 15 discharge chambers and which assumes an open position, communicating the first and the third discharge chambers when a gas mass flow

passing from the compression chamber 7 to the first discharge chamber 12 reaches a determined gas mass flow value, and a closed position blocking, at least in most part, said fluid communication between the first 12 and third 15 discharge chamber when said gas mass flow reaches values that are lower than the determined gas mass flow value; wherein the valve means 30 is disposed in a third discharge orifice 20 provided between the first discharge chamber 12 and the third discharge chamber 15; wherein, valve 30 is in the form of a vane mounted to the valve plate 4 (see valve vanes in Figs. 2 and 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to have modified the muffler assembly of Riffe by implementing a valve between the first and third discharge chambers that may open and close depending on the gas mass flow value, as taught by Fogotti, in order to allow for high compressor efficiency while minimizing noise.

4. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riffe 5,173,034 in view of Fogotti WO 99/53200 in view of Seo U.S. 2002/0136646 A1.

Riffe in view of Fogotti discloses the invention as discussed above. However, Riffe in view of Fogotti does not teach the following valve blade limitations taught by Seo.

Seo discloses a discharge arrangement for a hermetic compressor comprising: a cylinder block 130 defining a compression chamber 131; a first discharge chamber (62) (see paragraph 7 and Fig. 1) receiving an intermittent gas mass flow from the compression chamber 131. Seo further discloses a valve plate 72 between the

compression chamber 131 and the first discharge chamber (62) carrying at least one suction valve 71a incorporated into a valve blade 71 affixed to a valve plate 72.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to have modified the valve assembly of Riffe in view of Fogotti by implementing the valves into valve blades and securing them to the valve plate, as taught by Seo, in order to increase the life span of the valve assembly. Furthermore, it is well known in the art to incorporate valves into valve blades.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER J. BERTHEAUD whose telephone number is (571)272-3476. The examiner can normally be reached on M-F 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on (571) 272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devon C Kramer/  
Supervisory Patent Examiner, Art  
Unit 3746

PJB  
/Peter J Bertheaud/  
Examiner, Art Unit 3746